

Case Law Review:

Cyberbullying

1

Cyberbullying

Occurs through a digital platform such as email, text messages, social networks and websites.

Examples of cyber bullying include:

posting or sending derogatory, threatening, personal or confidential messages or images targeting a group or individual via a digital platform.



2

2

Case #1:

Termination for FaceBook Post

United Steelworkers of America
L9548 v. Tenaris Algoma Tubes
Inc (2014)

[Home](#) > [North America](#) > [Canada](#) > Termination for Facebook post upheld by arbitrator – Despite absence of social media policy

Termination for Facebook post upheld by arbitrator – Despite absence of social media policy



By **Michael Torrance** on February 14, 2015
Posted in **Canada, Discrimination and harassment**

The recent decision of *United Steelworkers of America, Local 9548 v Tenaris Algoma Tubes Inc, 2014 CanLII 26445 (ON LA)* provides an example of how a unionized employee's off-duty social media behavior can justify dismissal, despite the absence of any reference to social media in the company's harassment policies.

The grievor was a crane operator who took issue with a female co-worker's job performance as a stocker. Following his shift, the grievor posted comments on his Facebook page about the stocker referencing one of her distinctive physical features. A third co-worker commented on the post and suggested performing a sexual act with that physical feature. The grievor responded and suggested subjecting the stocker to further violent and humiliating sex acts. The stocker became aware of these comments and notified the company. The company relied on its Code of Conduct and Harassment and Violence policies in terminating the grievor. The union grieved his termination.

In upholding the grievor's termination, Arbitrator Trachuck considered the vicious and humiliating nature of the grievor's Facebook comments referencing the stocker. Arbitrator Trachuck also noted that the grievor must have known the stocker would see or hear about the posts since the grievor had co-workers as "friends" on Facebook, the grievor had no privacy settings on his Facebook account, and the grievor left the comments visible on his Facebook page for 10 hours. Arbitrator Trachuck noted that the company's harassment policies did not address Facebook or other social media but did not consider this to be a factor mitigating the grievor's actions.

This case illustrates how workplace harassment can occur even in an employee's off-duty conduct through social media. While workplace policies should be updated to reflect the prevalence of social media harassment, the absence of such references does not prohibit an employer from imposing discipline for social media harassment where appropriate – particularly in the most egregious cases where harassment policies clearly apply.

3

Case #1: Termination for FaceBook Post **USWA L9548 v Tenaris Algoma Tubes Inc (2014)**

- The grievor was a crane operator who took issue with a female co-worker's job performance as a stocker.
- Following his shift, the grievor posted comments on his Facebook page about the stocker referencing one of her distinctive physical features.
 - A third co-worker commented on the post and suggested performing a sexual act with that physical feature.
 - The grievor responded and suggested subjecting the stocker to further violent and humiliating sex acts.
- The stocker became aware of these comments and notified the company.
- The company relied on its Code of Conduct and Harassment and Violence policies in terminating the grievor.
- The Union grieved the termination arguing the employee was terminated without just cause

4

4

Case #1: USWA L9548 v Tenaris Algoma Tubes Inc (2014)

Arbitrator's Decision:

In upholding the grievor's termination, the Arbitrator considered the vicious and humiliating nature of the grievor's Facebook comments referencing the stocker.

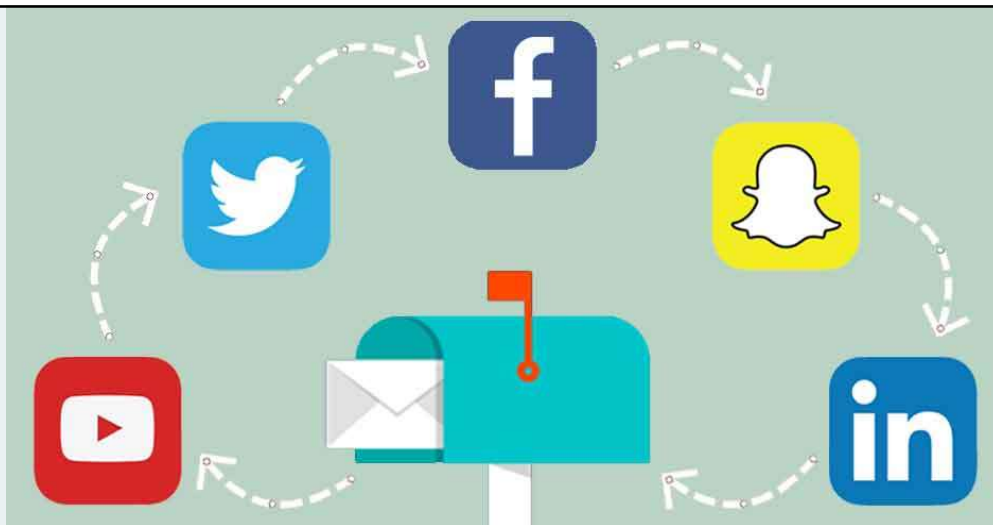
The arbitrator also noted that the grievor **must have known** the stocker would see or hear about the posts since

- the grievor had co-workers as "friends" on Facebook,
- the grievor had no privacy settings on his Facebook account, and
- the grievor left the comments visible on his Facebook page for 10 hours.
- The arbitrator noted that the company's harassment policies **did not** address Facebook or other social media but did not consider this to be a factor mitigating the grievor's actions.

Workplace harassment can occur even in an employee's off-duty conduct through social media

5

5



Emails, Facebook, and Family Wills

6

Case #2: NS - SC

Cyberbullying and Power of Attorney (Will Administration)

The Director of Public Safety
Applicant
v.
Joseph Lee (2014)



7

Case #2 The Director of Public Safety Applicant v. Joseph Lee (2014)

Ms. Murray and Mr. Lee's mother suffered from cancer. Ms. Murray, who is a nurse, moved in with their mother during her illness.

- She died on June 8, 2014.

Ms. Murray was the sole beneficiary under the will. She decided to stay at the home with her husband and two children.

- Mr. Lee contacted Ms. Murray by email shortly after their mother's death to inquire about the contents of the will and the power of attorney. On June 21, 2014, Ms. Murray responded, attaching electronic copies of the documents.

On June 24, 2014, Mr. Lee notified Ms. Murray via email that he would be contesting the will. He followed up the next day with two more emails.

- In the first email, he sought Ms. Murray's word that she would not dispose of or alter anything until the will was probated.
- In the second email, he requested information about their mother's debts and bank account. He also asked for keys to the house for him and their two other brothers, asserting that he had "just as much legal right to [their] family home as [she does] until the will is probated."

8

8

Case #2 Escalating Tempers / Online Posts

The alleged cyberbullying began in earnest on June 25, 2014, with a text message from Mr. Lee to his sister stating

- “[y]ou are dead to me get your lying manipulative abusive [a—] out of that [f—g] house or I will send the RCMP.”

Mr. Lee went on to accuse Ms. Murray of fraud, breach of trust, and elder abuse. The alleged cyberbullying became public on June 26, 2014, when Mr. Lee made the following Facebook post:

- If you do not wish people to disown you and out you as a lying manipulating sleazy sack of [s—t], then please do not be a sleazy lying manipulative sack of [s—t]. Simple solution, you cannot blame others for something you do.

Mr. Lee also sent Ms. Murray a series of emails in which he threatened to inform her employer of her alleged misdeeds with respect to their mother’s estate. The first email was dated June 29, 2014:

- Heads up... I will also be contacting [Cape Breton District Health Authority] with my allegations.... being an RN and caregiver in this situation is quite relevant to your position.... Hence the “breach of trust”... they should actually teach you guys this stuff at university... or when you get that mensa card you keep waving around

9

9

Case #2 Continued

Mr. Lee withdrew this threat the following day. In other messages Mr. Lee professed his continued love for his sister, followed shortly by a message announcing that he had “a weak moment” and should have known better.

Mr. Lee continued to make threats involving potential charges from the RCMP.

- On July 30, 2014, he e-mailed, “Oh boy have I got a surprise for you, hopefully the RCMP will deliver it within the next few days.”

Meanwhile, Mr. Lee continued to post on Facebook. On August 9, 2014, he posted the following:

- Does anybody out there in Facebook land think it is ok for the caregiver of a 67 year old lady dying of brain tumours & loaded up with narcotics, take that 67 year old lady into the lawyers office days (literally days) before the lady dies of those same brain tumours and have the lady sign everything she owns (and some stuff she didn’t own) over to the caregiver???? Because that is exactly what my sister did And [sic], any of you cowards in my family that read this and then go “tsk tsk” behind my back and leave my Mother dead and undefended should be as ashamed of yourselves as Veronica should be.

10

10

Case #2 CyberSCAN Unit Intervention

The CyberSCAN unit opened a file in response to Ms. Murray's complaint on August 13, 2014. The Director assigned Lisa Greenough to investigate.

- She advised Mr. Lee that his actions amounted to cyberbullying. She requested that he stop this activity and that they meet to discuss the matter.

Mr. Lee was not receptive to Ms. Greenough's request. He expressed concerns about the lack of evidence being presented to him and expressed his distaste for Ms. Greenough and Ms. Murray on Facebook on September 11, 2014:

- "Lisa Greenough from cyber bullying task force, you are as full of [s—t] as my sister Veronica.... And you can both go [f—k] yourselves.... P.s. I am sure both of you snoopy arrogant deceitful lying [s—t] bags are reading this... go [f—k] yourselves!!!!"

On October 6, 2014, Mr. Lee put up the following Facebook post:

- "I said my sister was a lying, manipulative fraudulent thief..... The Cyberscan people said I really should apologize, so here goes, and it is heartfelt and sincere. I am truly deeply and sincerely sorry that my sister is a lying, manipulative, fraudulent thief."

11

11

Case #2 Impacts on Victim

Later that month Mr. Lee posted a gruesome Facebook post wishing suffering and disease on his sister, concluding, "I absolutely hate her with every fiber of my being."

Ms. Murray provided Ms. Greenough with a statement describing the impact of her brother's campaign against her on September 14, 2014:

I became so upset I was unable to eat or sleep, I could not focus and I actually became afraid to be alone. [...] My grown boys looked broken as they stood beside me, hugging me while I cried and was visibly coping poorly [...] I felt responsible for the increased humiliation in our lives; not only were we bereft, this constant presence of public humiliation tainted every faction of our lives. I knew it had become fodder for public opinion when I walked into my chiropractor in July and was greeted with "so you're all over Facebook."

She made attempts to meet with Police to discuss the situation but was unable to walk into the station for fear of more outbursts or rage from Mr. Lee.

Ms. Murray suggested that she had contemplated suicide at one point, as well as giving in to her brother and "and giving him what he wants so that he will just go away and leave me and my family to live in peace, but I do not believe that he will ever voluntarily leave me in peace."

12

12

Case #2 The Director of Public Safety Applicant v. Joseph Lee (2014)

Arbitrator Decision:

The cyberbullying order request was granted and Mr. Lee was ordered to pay \$750 cost of the application as well as remove all electronic communication regarding Ms. Murray.

The Supreme Court found that on the balance of probabilities, Mr. Lee's actions amounted to cyberbullying.

- Mr. Lee repeatedly sent messages and made posts that he either intended or reasonably ought to have expected to cause fear, intimidation, humiliation, distress or other damage or harm to Ms. Murray's health, emotional well-being, self-esteem and reputation.

Regardless of the merits of Mr. Lee's concerns pertaining to the validity of the will, they do not justify his actions.

13

13

Thank you

Presented by:

Cole Holmes & Paola Bruno

HR Specialists

cole.holmes@ttes.ca

paola.bruno@ttes.ca

14